

Amendments to House Bill No. 81
1st Reading Copy

Requested by Representative Mike Menahan

For the House Judiciary Committee

Prepared by David Niss
January 11, 2011 (7:24am)

1. Title, line 5.

Following: "FUND;"

Insert: "PROVIDING FOR ORDERS AND JUDGMENTS REQUIRING PAYMENT
INTO THE FUND;"

2. Title, line 8.

Strike: "AND"

Insert: ", "

Following: "30-10-103,"

Insert: "AND 30-10-305,"

3. Title, line 9.

Strike: the second "AND"

Insert: ", "

Following: "DATE"

Insert: ", AND A TERMINATION DATE"

4. Page 2, line 2.

Strike: "under [section 3]"

Insert: "by [section 4]"

5. Page 4, line 20.

Strike: "3"

Insert: "4"

6. Page 10.

Following: line 18

Insert: "Section 11. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies -- limitations
on actions. (1) If it appears to the commissioner that any person
has engaged or is about to engage in any act or practice
constituting a violation of any provision of parts 1 through 3 of
this chapter or any rule or order under this chapter, the

commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the hearing hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable ~~attorneys'~~ attorney fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability ~~founded~~ based on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded based on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

(5) The commissioner in an administrative order requiring the payment of restitution or a court in a judicial order or judgment requiring payment of restitution may include a provision requiring a person determined to have violated any provision of parts 1 through 3 of this chapter to contribute an amount to the securities restitution assistance fund created by [section 4]."

{Internal References to 30-10-305:

30-10-309 30-10-321 30-10-326 }"

Renumber: subsequent sections

7. Page 11.

Following: line 1

Insert: "Insert: "NEW SECTION. Section 16. {standard}

Termination. [This act] terminates June 30, 2017."

- END -